IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2780 of 1992

SMT. SARWAN DEVI
V/S
UNION OF INDIA

Mr. DK PARIHAR, for the appellant / petitioner

Mr. RAVI BHANSALI, for the respondent

Date of Order : 13.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This petition has been filed by the petitioner, seeking to claim pension, and for quashing the letters Ex. 5, 6 and 7 dated 18.5.78., 14.10.1981, and 27.8.87 respectively.

The claim of the petitioner is that her husband Balla Ram was in service of Army from 20.12.1942 to 20.2.1957, and was discharged from service on the ground of disability, being mental case. The certificate in this regard is produced as Annexure-1. It is alleged that Balla Ram was under treatment of Mental Hospital, Bareilly from 24.2.1961, and died on 21.8.1981 in the hospital itself. The petitioner wrote letter dt. 4.5.1978, for grant of disability pension, family pension, and ordinary family pension, but it was rejected vide Annexure 5, 6 and 7 dt. 18.5.78., 14.10.1981, and 27.8.87.

With these facts the pension has been claimed on the ground, that the incumbent was discharged on the ground of invalidity from service, when he completed 14 years 2 months of service, i.e. completed the service for pension, and pension should be granted. The other ground taken is, that the incumbent was discharged as a mental case, and therefore, disability pension was required to be granted, and the petitioner is entitled to arrears thereof. In the alternative, the petitioner has claimed to be entitled to family pension, and in any case, to special family pension, as her husband was discharged on medical ground. It is pleaded that non payment of pension, every day gives a fresh cause of action to the petitioner. On these grounds the above reliefs have been claimed.

A reply has been filed, wherein a preliminary objection has been raised, to the effect, that according to Section 4 of the Pension Act, 1987, the Civil Courts cannot entertain any suit relating to pension, and that, a right to pension cannot be litigated in the court of law, and Civil Courts have no jurisdiction to pass any decree orders enforcing any liability on the Government to pay any pension, as such the writ petition is not maintainable. Then, a para wise reply is also given, and therein it is contended, that the matter was considered, and it was found, that the petitioner was not eligible for disability/

family pension, and therefore, the claim was rejected more than once. It was pleaded that the competent authority found, that since the disability was neither attributable to, nor aggravated by, military services, therefore, incumbent was not entitled for the grant of disability pension, and since he had not completed the qualifying pensionable service of 15 years, in view of Annexure R/2 he was not entitled to regular pension either. It was pleaded that the incumbent was invalidated out being a case of MANIC DEPRESSIVE PSYCHASIS. The same was neither attributable to, nor aggravated by, the military service, and therefore, he was not entitled to disability pension, and the amount of gratuity was of course paid.

Arguing the writ petition, learned counsel for the petitioner maintained the stand taken in the writ petition, while the learned counsel for the respondent did not substantiate the preliminary objection, and argued regarding the stand taken on merits, about non-entitlement of the petitioner to get any pension.

From the above it is clear, that it is not in dispute, that the incumbent was enrolled on 20.12.1942, and was discharged by being invalidated out on 20.2.1957, and thereafter he remained in hospital, from 24.2.1961 to 21.8.1981, where he ultimately died. In these circumstances, the only question is, as to whether the

disability, on account of which the incumbent was invalidated out on medical grounds, can be said to be attributable to, or aggravated by, military service. If the answer is in the affirmative, the petitioner becomes entitled to relief, and if the answer is the negative, then the petitioner shall not be entitled to any relief.

Before proceeding further I may notice here, that when the writ was argued for admission on 26.5.1992, learned counsel for the petitioner confined the claim for family pension from the date of filing of the writ petition, and when the matter was argued on 12.4.2006, learned counsel confined the claim to the family pension from 1.1.2000.

Then, arguing the writ petition, learned counsel for the petitioner relied upon the judgments of this Court, in Chatar Singh Vs. Union of India, reported in 2005 WLC (Raj.) UC-352, Nathu Singh Vs. Union of India, reported in 2003(98) FLR-785, and in B.L. Swarankar Vs. Union of India, reported in 2005(9) RDD-3911 (Raj.). Learned counsel also cited the judgments of Hon'ble the Supreme Court, in Ram Pal Singh Vs. Union of India, reported in 1983(3) SLR-291, and Madan Singh Shekhawat Vs. Union of India, reported in AIR 1999 SC-3378.

On the other hand, learned counsel for the

respondent relied upon judgment of Hon'ble the Supreme Court, in Union of India Vs. Baljit Singh reported in (1996) 11 SCC-315, and Controller of Defence Accounts (Pension) & Ors. V/S S. Balachandran Nair, reported in AIR 2005 S.C. 4391.

I have considered the submissions, and have gone through the various judgments. It is contended by the learned counsel for the petitioner, that the matter of grant of disability pension is governed by the provisions of Regulations 173 and Rule 7(b) of the Appendix II (Entitlement Rules), while the learned counsel for the respondent submits that these rules came into force much after the petitioner was discharged. However, he submitted that he is not aware of the earlier rules which were in force at the time when the incumbent was discharged but then those rules must also be analogous to these rules.

In that view of the matter for ready reference I may quote the provisions of Regulation 173 and Rule 7(b) which read as under:-

> "173. Unless otherwise specifically provided a disability pension may be granted to an individual who is invalidated from service on account of a disability which is attributable to or aggravated by military service and is assessed at 20 per cent or over."

> "7(b). A disease which has led to an individual discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service."

Now, I may deal with the various cases cited by the learned counsel for the either side. Taking up the judgment of Hon'ble the Supreme Court in Ram Pal Singh's case, in my view this judgment has no application to the present case, inasmuch as, in that case, it was not in dispute, that the disability of the incumbent was "Multiple Shell wounds", and he was invalidated from service on account of disability, and the question was, as to what should be the extent of entitlement of pension, and what should be taken to be the period of service rendered by the incumbent, which is not the controversy in the case in hand. Therefore, this case does not help the petitioner.

Then taking up Madan Singh's case, this case again is distinguishable, inasmuch as, in that case the incumbent while alighting from train at Didwara Railway Station, sustained an accident, on account of which his right hand was amputated, which is 4 inches below from the joint of collar bone. This accident occurred, when the incumbent was traveling from Jodhpur to his home station on authorised casual leave, granted to him. In those circumstances, the

question before Hon'ble the Supreme Court was, as to whether incumbent could be denied the benefit of disability pension, merely because, disability was incurred while he was going to his home town on casual leave at his own expenses, and not at the public expenses, more so when the travel was not undertaken unauthorisedly. Thus, on facts, this case being distinguishable, does not help the petitioner.

In Nathu Singh's case, the matter before the Division Bench was, that the incumbent was enrolled on 13.11.1967, while in service he fell ill, and consequently he was boarded out on 19.10.1968, as his disability was assessed at 100%. His claim for disability pension was rejected, which was challenged, and the Single Bench of this Court granted the disability pension, but from a later date, which was challenged before Division Bench. In appeal it was contended by the learned counsel for the respondent, that the incumbent was not entitled to be granted disability pension as the writ was delayed, and this objection of delay was negatived by relying upon judgment of Hon'ble the Supreme Court, in S.K. Mastan Bee Vs. The General Manager, South Central Railway, reported in JT 2002 (10) SC-50. In my view, since the learned counsel for the petitioner has confined his claim from 1.1.2000, this Division Bench judgment in Nathu Singh's case need not detain me.

In Chatar Singh's case, the petitioner was enrolled on 27.12.1967, was discharging the duty in the field, and was promoted in 1972, was selected for re-mustering to the trade of Instructor/Repairs II. At that time he was again medically examined. Then in December 1976 he was placed in medical Category 'CEE' (Permanent), and was thereafter promoted to the rank of Sargent in the year 1987. It was alleged, that while serving in a ‘hard area tenure’, he suffered from High Blood Pressure, and was diagnosed as a case of 'Essential Hypertension' in the year 1989. Consequently, the petitioner remained under treatment at Barmer and also at Ahmedabad, and was then brought before the Medical Board in June 1990, where he was declared unfit to perform duties, and accordingly he was discharged in December, 1993. The respondents assessed this disability to the tune of more than 30%, but disability pension was declined, on the ground of disability being not attributable to Air Force Service, nor aggravated by it. On these facts, relying upon judgment of this Court, in Ex. Sgt. Tejpal Singh Vs. Union of India, being S.B. Civil Writ Petition No. 1083/2001, decided on 21.2.2004, and that having been affirmed by the Division Bench, vide judgment dt. 2.12.2004, so also another judgment of this Court, in Dariyav Singh Vs. Union of India, reported in 1997(3) WLC (Raj.)-693, it was held, that Rule 7(b) provides for drawing valid presumption. Accordingly, it was found that

when the petitioner was enrolled, no note was made by the authorities, about incumbent being suffering from the disease, and the respondent failed to satisfy, as to why the Medical Board examining the petitioner in the year 1993 had not supplied any reasons, to hold, that it was not possible to detect aforesaid diseases at the time of enrollment in service, the presumption is required to be drawn, and accordingly the pension was ordered to be paid. This judgment does completely help the petitioner. Then, B.L. Swarankar's case, being a Division Bench judgment, is again on the same lines, and follows the judgment in Chater Singh's case, so also Tej Pal Singh's case. Thus, this Division Bench judgment also fully supports the case of the petitioner. And the gravamen of these judgments is, that at the time of enrolment no note was made by the authorities, about incumbent being suffering from the disease, and the respondent failed to satisfy, as to why the Medical Board, examining the petitioner at the time of examining for invalidating out, had not supplied any reasons, to hold, that it was not possible to detect the diseases at the time of enrollment in service, the presumption is required to be drawn to the effect that the disease or infirmity is attributable to, or at least is aggravated by the military service, rendering him entitled to the disability pension.

Now, I may take up the cases cited by the learned

counsel for the respondent.

In Baljit Singh's case the respondent was enrolled as Army Apprentice on 30.3.1975, and while in service, he sustained moderately severe injury in the right thigh, and right knee, and was admitted to Military Hospital, where he was downgraded to medical category “CEE”. Then, he was discharged. Then on 10.5.1981, the Medical Board found him physically incapacitated, and reported in Psychiatric OPD, where he was diagnosed to have a “Neurosis superimposed on an immature histrionic personality”, and was recommended to invalidated out from service, and was discharged on 31.5.1981. Then, the incumbent filed the writ petition, whereupon the High Court directed the appellants to pay disability pension. Assailing that judgment the matter went to Hon'ble Supreme Court, and it was contended on behalf of the employee, that as per Medical report, the injury was sustained by him while he was in service, and that, therefore, it has been presumed that it was during service, and accordingly must be attributable to military service, while the contention of the counsel for the Union of India was, that after examination of the respondent by the Board Members, it was reported, that the injury was not connected with the service, and as a result, he cannot be declared to have suffered injury, due to service. Hon'ble the Supreme Court accepted the contention of Union of India, and held, that various criteria have been prescribed in the

guidelines, as to when the disease or injury is attributable to the military service. It is seen that under Rule 173 disability pension would be computed only when disability has occurred due to a wound, injury or disease which is attributable to military service, or existed before, or arose during military service, and has been, and remains aggravated, during the military service. If these conditions are satisfied, necessarily the incumbent is entitled to the disability pension. It was found to have been made amply clear from clauses (a) to (d) of para 7, which contemplates, that in respect of a disease, the Rules enumerated thereunder require to be observed. Clause (c) provides, that if a disease is accepted as having arisen in service, it must also be established, that the conditions of military service determined, or contributed, to the onset of the disease, and that the conditions were due to the circumstances of duty in military service. Unless these conditions are satisfied, it cannot be said that the sustenance of injury, per se, is on account of military service, which in view of the report of the Medical Board of doctors, it was not due to military service. It was further held that the conclusion may not have been satisfactorily reached, that the injury though sustained while in service, it was not on account of military service. It was categorically held that in each case, when a disability pension is sought for, and made a claim, it must be affirmatively established, as a fact, as to whether

the injury sustained was due to military service or was aggravated, which contributed to invalidation for the military service.

Then, in S. Balachandran Nair's case, the respondent had joined Indian Army on 7.2.1972, had undergone a medical examination at the time of recruitment, and then he underwent training, and was posted. However, while working in the office of Radio Machine, was admitted in the hospital on 10.8.1977. He was completely cured, then had some kidney complications, and the medical authorities found his illness as 'anxiety neurosis'. He was again admitted in Military Hospital in December, 1979 and after prolonged treatment he was boarded out, and the medical authorities were of the opinion, that he became unfit for continuing in service, and was finally discharged, w.e.f. 18.3.1980. The claim for disability pension was rejected, on the ground, that there was no proof, that the disability existed before, or developed during military service, and/or had aggravated thereby. The High Court held, that that the respondent had been working in sensitive and turbulent areas, and this must have aggravated his disease, and the stress and strains of military service were the sole cause of his illness, and it was directed, that disbursement of disability pension be made, which was affirmed by the Division Bench. Assailing this order, the matter was taken to Hon'ble the Supreme Court. It was

contended, that there must be a causal connection, between disablement, or death, and military service, for attributability, or aggravation, to be conceded. Then, Hon'ble the Supreme Court referred to Regulation 423, which provided for attributability to service, and according to Clause (d) thereof, the question, whether a disability or death is attributable to, or aggravated by, service or not, will be decided, as regards its medical aspects, by a medical board, or by the medical officer, who signs the death certificate. The medical board/medical officer will specify reasons, for their/his opinion. The opinion of the medical board/medical officer, in so far as it relates to the actual cause of the disability, or death, and the circumstances in which it originated, will be regarded as final. The question, whether the cause and the attendant circumstances can be attributed to service will, however, be decided by the pension sanctioning authority. Then, Hon'ble the Supreme Court referred to Baljit Singh's case, so also yet another judgment of Hon'ble the Supreme Court, in Union of India Vs. Dhir Singh China, reported in 2003(2) SCC-382, wherein in para-7 it was found, that the Medical Board had found, that the two disabilities from which the respondent was suffering, were not attributable to, or aggravated by, military service. Clearly, therefore, the opinion of the Medical Board ruled out the applicability of Regulation 53, to the case of the respondent. The diseases from which he was suffering were not found to be

attributable to, or aggravated by, military service, and were in the nature of constitutional diseases, such being the opinion of the Medical Board, it was held, that the respondent can derive no benefit from Regulation 53. Following this judgment, it was held, that in the case before Hon'ble the Supreme Court, in view of the fact that Medical Board's opinion was clearly to the effect, that illness suffered by the respondent was not attributable to military service, the High Court was not justified in their respective conclusions, and the respondent was held to be not entitled to disability pension.

It may be noticed here, that this matter came up before the Court on 15.3.2005, and that day, four weeks' time was allowed to the counsel for the respondent, for placing on record the report of the Medical Board, on the basis of which the petitioner was declared invalid in military services. The respondents were also directed to place on record, the material, showing that the disease, on the basis of which the petitioner was invalidated, was neither attributable to military service, nor the same was aggravated during military service. In compliance thereof, learned counsel has made available to the Court, the complete service record of the petitioner. From perusal thereof it transpires, that the deceased was earlier discharging duties of Sepoy, and as appears from medical history sheet of the deceased, as appears at page-20, no

ailment was found. Then, the learned counsel has produced the proceedings of the invalidating Medical Board, which starts from page-32 onwards, and at page-32, in column 15, requiring mention of prominent occurrences during life, or service, which is reported to be “Nil”. Then, at page-36, history was noticed, to the effect, that the deceased was complaining of gurgling sensation in the abdomen, he developed headache a day later. He was admitted in the hospital on 1.1.1957, and history was, that two days before admission, the above sensation was found, that he had a vacant look, he refused food. Then, in Military Hospital Jabalpur he was found to be talking irrationally, shouted loudly, and was uncooperative, and was difficult to maintain. Then, it was found to be a case of “Manic Depressive Psychosis”. Then, a look at page-40 shows, that the Board clearly opined, that the disease is neither attributable to, nor aggravated by, the services. Likewise, it has further been reported, that no deteriorations resulted from any negligent, delay, faulty technique, or lack of reasonable skill, in the service medical treatment, or the exigencies of service, before, during, or after, the treatment. Then, a look at page-41 shows, that the Board found, that at the time of enrollment, he was found apparently fit, but the disease existed in latent form. The Board also found, that it was a constitutional disease, unconnected with service condition. Then, answering clause (b), it was reported, that no such deterioration has

resulted in man's condition, during war service. Then, the Senior Specialist in Psychiatry has also reported, that he was doing P.T. and parades regularly prior to falling ill, and was doing normal duty. Thus, the Medical Board has clearly opined, that the disease was constitutional disease, not connected with the service, and was neither attributable to, nor aggravated by, the service conditions.

On the face of this report of the Medical Board, in view of the judgment of Hon'ble the Supreme Court, in Baljit Singh's case, and S. Balachandran Nair's case, the three judgments, being in B.L. Swarankar's case, Chatar Singh's case and Tejpal Singh's case, cannot be followed by me. The gravamen of these judgments is, that in those cases, when the incumbent was enrolled, and no note was made by the authorities, about incumbent being suffering from any disease, and the respondent failed to satisfy, as to why the Medical Board did not supply reasons, to hold that it was not possible to detect the aforesaid disease, at the time of enrollment in service, and therefore, presumption was drawn. As against this, it has clearly been ruled in Baljit Singh's case, and S. Balachandran Nair's case, that the question, as to whether, the disability is attributable to, or aggravated by military service, is to be decided, taking into consideration the medical aspect, opined by the Board, and the opinion of the Medical Board, in this regard, shall be regarded as final. Obviously,

therefore, in view of the judgment in Baljit Singh's case and S. Balachandran Nair's case, no room can be left for any presumption, as drawn by the learned Single Judge, in Chatar Singh's case, and the Division Bench in B.L. Swarankar's case, so also in Tejpal Singh's case.

B.L. Swarankar's case was decided on 28.9.2005, while S. Balchandran Nair's case was decided on 21.10.2005. The judgment in Baljit Singh's case has of course been considered by the Division Bench in B.L. Swarankar's case, but it has been distinguished on the ground, that it was a case of injury, and not of disease, while the judgment in S. Balchandran Nair's case which relates to disease itself, found to be 'anxiety neurosis'. In these circumstances, on the basis of the authorities of Hon'ble the Supreme Court in Baljit Singh's case and S. Balachandran Nair's case, in my view, the petitioner or the deceased, cannot be said to be wrongly refused the disability pension.

So far the regular pension is concerned, the averment in ground-1 of the writ petition is, that he had completed 14 years and two months of service, and that was claimed to be completed pensionable period. While in reply, it is contended, that in view of Annexure R/2, the minimum qualifying service is 15 years of service with colours, and for non-combatants 20 years, to be reckoned from the age of 17 (16 in the case of those enrolled prior to the 20th

September 1945) or from the date of enrolment, whichever is later. Admittedly, when the deceased had not completed 15 years of service, and the service was lacking by around 10 months, he cannot be said to be entitled to the regular pension either.

Thus, taken from any stand point, I do not find any force in the writ petition. The same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/